pursuance of the statute or, even though it fails to, if service is made on its agents, — while there is no consent if service is made on a state officer. Indeed the court seems to assume that actual consent does exist, for it intimates that such service would be proper for actions arising in the state. There is no logical reason why the consent is not to the full extent of the statute.[14] Or if the Supreme Court means that there is no real consent to jurisdiction and that it is therefore contrary to due process, how may the corporation be made by the state to waive its constitutional rights as to domestic and not as to foreign causes? On either view the result is inconsistent, and means that the corporation is excused from paying the full agreed price for a privilege granted.

LOSS CAUSED BY FEDERAL SHIFTING OF HARBOR LINES. — It is not uncommon to be startled by the outcome of particular litigation when it is looked at apart from the close logic or compelling policy that underlies it. Such is the case with regard to a recent expression by the Supreme Court of the United States on the question of federal control over navigable waters. *Greenleaf Johnson Lumber Co.* v. *Garrison*, 237 U. S. 251. The plaintiff sought to enjoin the Secretary of War from destroying without compensation a wharf which he had built in conformity with the state and with the later established federal harbor line, but which had become an obstruction to navigation under the harbor line as now changed by the War Department. The relief was denied.[1]

At first thought this result seems altogether shocking. Instead of stimulating commerce by the fixing of a harbor line, the government may find itself in the position of deterring development along the waterfront. Investors will not dare risk their capital if they must act at the peril of seeing it become a total loss when the Secretary of War changes his mind. Nevertheless the decision seems analytically correct. Sovereign powers that affect the welfare of the public cannot become the subject of grant. Congress can no more by estoppel clog its power to regulate commerce, than a state can contract away its police power. Whenever the executive in a *bonâ fide* exercise of its discretion alters the harbor line to meet the requirements of navigation, it must remove all obstructions that come within it. No structure can be erected that is not subject to the public easement of passage, and removing an obstruction cannot be a *taking* in the forbidden sense.

Even were the question debatable on principle, there is a coherent line of authority which would make the present decision inevitable. It was early settled that under its power to regulate commerce Congress may at any time assume control of all navigable waters that are accessible

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[14] Thus, if the statute is clear, the service may be had even after the corporation has ceased to do business in the state. See 19 HARV. L. REV. 52. The same is true if the cause arises in the state, but not in the course of any of the corporation's regular state business. American Casualty Ins. Co. *v.* Lea, 56 Ark. 539, 20 S. W. 416.

[1] Lamar, J., dissenting. For a more complete statement of facts, see p. 814 of this issue.

to interstate commerce, and may keep them free from obstruction.[2] When the plaintiff acted in accordance with the then existing state regulations he was therefore, of course, subject to impending federal action. To lodge in the Secretary of War the requisite discretion to determine the facts concerning what limitations are properly to be laid on the riparian owners in the interest of commerce is not invalid as a delegation of the legislative function.[3] It, of course, follows that his power is not exhausted by a single exercise, for the public easement remains always dominant, and the changing requirements of commerce will demand varying limitations.[4] Whenever such a change is made, hardship is apt to occur, but numerous other results have been sustained that eclipse that of the principal case. A railway company was compelled to remove without compensation a bridge which it had erected under an express state charter, when the Secretary of War decided that it interfered with navigation, and the fact that he had acquiesced over a long period of time was given no weight whatever.[5] An oyster company is entitled to no indemnity if in the process of dredging a channel an oyster bed is destroyed which it has taken years to develop.[6] Access to the shore may be cut off by a pier which is necessary to the protection of the channel.[7] Perhaps the most extreme case of all is where a power company which had erected an expensive plant on the bank of a river with the express consent of the Secretary of War was forbidden by Congress from taking any water whatever from the stream, even the surplus above what was needed for navigation.[8]

But by way of contrast to all of this it was held that where the government erected a dam which flooded the plaintiff's land he was entitled to compensation.[9] The result of this last case indicates the correct distinction. Within the scope of the public easement of navigation no individual can acquire more than permissive rights, but when the scope of that easement is to be geographically extended, compensation must be made for the loss which it imposes. Another contrasted distinction is that where an improvement company has been authorized to perform a particular act of regulation for the government, such as the building of a dam, the property cannot be taken over without compensation.[10] Apparently it was with this in view that the plaintiff urged that his wharf was a benefit to navigation that had been acquiesced in by the War Department. In a sense the principal case does seem to go a step

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[2] See Gilman *v.* Philadelphia, 3 Wall. (U. S.) 713, 725.

[3] Union Bridge Co. *v.* United States, 204 U. S. 364.

[4] Philadelphia Co. *v.* Stimson, 223 U. S. 605.

[5] Union Bridge Co. *v.* United States, *supra;* see also West Chicago Railroad Co. *v.* Chicago, 201 U. S. 506. For a similar principle applied to the states, see Chicago, B. & Q. Ry. Co. *v.* Illinois, 200 U. S. 561.

[6] Lewis Blue Point Oyster Co. *v.* Briggs, 229 U. S. 82.

[7] Scranton *v.* Wheeler, 179 U. S. 141. See 14 HARV. L. REV. 451.

[8] United States *v.* Chandler-Dunbar Water Power Company, 229 U. S. 53.

[9] United States *v.* Lynah, 188 U. S. 445.

[10] Monongahela Navigation Co. *v.* United States, 148 U. S. 312. This case was explained in Lewis Blue Point Oyster Co. *v.* Briggs, *supra*, as based upon estoppel, because action was taken "at the instance and implied invitation of Congress." As it is difficult to see how Congress could estop itself out of its sovereign rights, it is submitted that the case really rests upon the fact of the plaintiff's being entitled to compensation for the public work he had contracted to do.

farther than previous authority, — for the bridges and other structures that hitherto have become obstructions chanced not to be facilities of maritime commerce. But, of course, the benefit of the plaintiff's wharf, although built for water traffic, accrued solely to himself. It was not built for public benefit under express contract with the government.

RECENT CASES

ADMINISTRATIVE LAW — ESSENTIALS OF HEARING BEFORE ADMINISTRATIVE BOARD ACTING JUDICIALLY. — An order of the state public utilities commission, made after public hearing as required by statute, was based on evidence obtained at the public hearing, and also upon *ex parte* investigations of the commission, of which the party affected was ignorant. *Held*, that this procedure violates the statutory requirement of a hearing. *Farmers' Elevator Co.* v. *Chicago, R. I. & P. Ry. Co.*, 107 N. E. 841 (Ill.).

This adds another to the list of American cases requiring that administrative boards shall not act in their quasi-judicial capacity without full disclosure of all evidence affecting the result. The principles involved are discussed in 28 HARV. L. REV. 198. See also 27 HARV. L. REV. 683.

BILLS AND NOTES — FORMAL REQUISITES — PROVISION TO APPLY COLLATERAL SECURITY TO ANY INDEBTEDNESS TO THE HOLDER. — A note made by the plaintiff recited that collateral had been deposited as security for its payment or for the payment of any other liability to the holder thereof. The note, with the security, was transferred to the defendant for value before maturity, and he seeks to hold the collateral as security for other debts of the plaintiff to him. The plaintiff having tendered the amount of the note sues for conversion. *Held*, that the plaintiff cannot recover. *Oleon* v. *Rosenbloom*, 93 Atl. 473 (Pa.).

The recital of collateral securing a note, similar to a power to confess judgment, does not destroy its negotiability. *Towne* v. *Rice*, 122 Mass. 67; see BRANNAN, NEGOTIABLE INSTRUMENTS LAW, § 5. Security for the payment of the note itself follows the note into the hands of subsequent holders and accrues to their benefit. *Carpenter* v. *Longan*, 16 Wall. (U. S.) 271. As between the original parties the security may also be applied to the payment of other debts as well as the note, according to the terms of the contract between them, if it so provides. *Hathaway* v. *Fall River National Bank*, 131 Mass. 14; *Union Brewing Co.* v. *Inter-State Bank & Trust Co.*, 240 Ill. 454, 88 N. E. 997. The word "holder" is a well-defined mercantile term, and when the agreement of the maker is unambiguous, to secure all debts to the holder, it is held that he likewise may thus broadly use the security. *Richardson* v. *Winnissimmet National Bank*, 189 Mass. 25, 75 N. E. 97; *Mulert* v. *National Bank of Tarentum*, 210 Fed. 857. This result need not be based upon any theory of the negotiability of such general security along with the note, or of a contract for the benefit of a third party. The maker has simply created a power, or agency, collateral to the note, to pass over the security for this broad purpose to anyone becoming a holder of the note. This would seem to be adequate to clothe the holder with the rights claimed.

CONFLICT OF LAWS — RIGHTS AND OBLIGATIONS OF FOREIGN CORPORATIONS — ASSESSMENT UPON MEMBER OF FOREIGN MUTUAL BENEFIT INSURANCE